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Attorneys for Mr. Aureliano Zapata-Lopez

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

**(HONORABLE BARRY TED MOSKOWITZ)**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AURELIANO ZAPATA-LOPEZ,

Defendant.

) Case No. 08CR0297-BTM

) DATE: JUNE 6, 2008

) TIME: 1:30 p.m.

) NOTICE OF MOTIONS AND MOTIONS TO:

) 1) DISMISS THE INDICTMENT BECAUSE IT  
) DOES NOT ALLEGE INSPECTION AND  
) ADMISSION BY AN IMMIGRATION OFFICER  
) OR ACTUAL AND INTENTIONAL EVASION OF  
) INSPECTION AT THE NEAREST INSPECTION  
) POINT;

) 2) DISMISS THE INDICTMENT BECAUSE IT  
) FAILS TO ALLEGE THE MENS REA ELEMENT  
) OF THE OFFENSE;

) 3) DISMISS THE INDICTMENT DUE TO  
) MISINSTRUCTION OF THE GRAND JURY;  
) AND

) 4) PRODUCE TRANSCRIPT OF GRAND JURY  
) PRESENTMENT OF INSTRUCTIONS  
) CONCERNING THE ELEMENTS OF THE  
) OFFENSE.

) 5) GRANT LEAVE TO FILE FURTHER  
) MOTIONS.

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND  
WILLIAM HALL, ASSISTANT UNITED STATES ATTORNEY:

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PLEASE TAKE NOTICE that on June 6, 2008, at 1:30 p.m., or as soon thereafter as counsel may be heard, defendant, Aureliano Zapata-Lopez, by and through his attorneys, Kris J. Kraus, and Federal Defenders of San Diego, Inc., will ask this Court to enter an order granting the following motions.

**MOTIONS**

Defendant, Aureliano Zapata-Lopez, by and through his attorneys, Kris J. Kraus, and Federal Defenders of San Diego, Inc., asks this Court pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law, and local rules for an order to:

- (1) Dismiss the Indictment Because it Does Not Allege Inspection and Admission by an Immigration Officer or Actual and Intentional Evasion of Inspection at the Nearest Inspection Point;
- (2) Dismiss the Indictment Because it Fails to Allege the Mens Rea Element of the Offense;
- (3) Dismiss the Indictment Due to Misinstruction of the Grand Jury; and
- (4) Produce Transcript of Grand Jury Presentment Instructions Concerning the Elements of the Offense.
- (5) Grant Leave to File Further Motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, the files and records in the above-captioned matter, and any and all other materials that may come to this Court's attention prior to or during the hearing of these motions.

Respectfully submitted,

Dated: May 23, 2008

/s/ Kris J. Kraus  
**KRIS J. KRAUS**  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Aureliano Zapata-Lopez  
Kris\_Kraus@fd.org

**CERTIFICATE OF SERVICE**

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of her information and belief, and that a copy of the foregoing document has been served this day upon:

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U S Attorneys Office Southern District of California  
880 Front Street  
Room 6293  
San Diego, CA 92101  
(619)557-5610  
Fax: (619)557-5917  
Email:william.hall@usdoj.gov

Dated: May 23, 2008

\_\_\_\_\_/s/ Kris J. Kraus\_\_\_\_\_  
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